

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Appeal S-523-SB of 2000

Date of Decision: 21.01.2015

Sarwan Kumar

....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. Simrandeep Singh Sandhu, Advocate,
for the appellant.

Mr. Munish Dev Sharma,
Assistant A.G., Haryana.

T.P.S. Mann, J.

Convict Sarwan Kumar has filed the present appeal, whereas his co-convict Gurmit Kaur alias Mito, has filed the connected appeal i.e. CRA-S-685-SB of 2000 for challenging the judgment and order dated 18/19.5.2000 passed by learned Additional Sessions Judge, Karnal.

Vide impugned judgment and order, the trial Court convicted Sarwan Kumar under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- and, in default of payment of fine, to further undergo imprisonment for six

months, whereas Gurmit Kaur alias Mito was convicted under Sections 376/120-B IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo imprisonment for three months. She was also convicted under Section 366 IPC and sentenced to undergo imprisonment for six years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo imprisonment for three months. In addition, both of them were convicted under Section 306 IPC and sentenced to undergo imprisonment for six years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

As the appeals filed by Sarwan Kumar and Gurmit Kaur alias Mito arise out of the same judgment of conviction and order of sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant-Jagdish went to Police Station Nissing on 17.9.1998 and made a statement that he was resident of village Bansa and an agriculturist by profession. He had three children, the eldest son was Rajinder while Surinder was his youngest son. His daughter, aged about 15/16 years, was his middle child. On that day, he along with his wife had gone to the

field after leaving his daughter alone in the house, but as she was not mentally stable, she had left the house. He searched for her, but in vain. Accordingly, on its basis a Daily Diary Report Ex.PA was entered regarding missing of his daughter.

Further case of the prosecution is that on 20.9.1998, complainant Jagdish met Inspector Pardeep Singh in the village and made statement Ex.PB before him at 9.00 a.m., alleging therein that on 17.9.1998, he and other members of his family were away to the fields while his daughter was all alone in the house. Mito alias Gurmit Kaur, who was a lady of bad character, had come to his house and lured his daughter to accompany her to her house. When his daughter and Mito alias Gurmit Kaur, were passing in front of the grocery shop, they were seen by Rambhaji, Suresh and Jai Bhagwan. When they went to the house of Mito alias Gurmit Kaur, she was found present there but after seeing them, she left her house and went somewhere. At that time, accused Sarwan Kumar and the complainant's daughter were found in compromising position. Sarwan Kumar was caught red handed, but he started begging pardon from them stating that the matter be not brought to the notice of the complainant or other persons. The complainant's daughter left the house of Mito alias Gurmit Kaur at about 11 a.m., whereas Sarwan

Kumar, while being taken to the house of Sarpanch, managed to escape. The complainant also stated that he had been searching for his daughter and on 20.9.1998, her dead body was found in Western Jamuna Canal (WJC) near village Gagsina. According to the complainant, accused Mito alias Gurmit Kaur in collusion with accused Sarwan Kumar had lured his daughter to her house for illicit intercourse with Sarwan Kumar. However, due to the shameful act, she committed suicide by jumping into the canal. After recording the statement Ex.PB of complainant-Jagdish, Inspector Pardeep Singh forwarded the same to Police Station Nissing where on its basis FIR No. 302 dated 20.9.1998 (Ex.PB/2) came to be registered under Sections 306, 366-A and 120-B IPC on 20.9.1998 at 10.15 a.m.

During the investigation of the case, statements of the witnesses were recorded. Site plans of the place of occurrence and of the place of recovery of dead body of the prosecutrix, were prepared. Post mortem on the dead body of the prosecutrix was got conducted and offence under Section 376 IPC added to the FIR. One Karambir was also arrayed as accused for the offence under Section 306 IPC. After completion of the investigation and presentation of challan followed by commitment of the case, while Sarwan Kumar was charged for committing the offence punishable

under Section 376 IPC, Gurmit Kaur alias Mito was charged for committing the offence under Section 376 read with Section 120-B IPC. Gurmit Kaur alias Mito was also charged for committing the offence punishable under Section 366 IPC. Both of them as well as Karambir were also charged for committing the offence punishable under Section 306 IPC. All the accused, however, pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses.

PW1-Jai Bhagwan testified that the deceased was his niece and accused Mito alias Gurmit Kaur, who resided in his Mohalla was of bad character. She used to entice innocent girls to indulge in bad things. He along with Suresh was standing in front of the shop of Ex-Sarpanch and at that time, Mito alias Gurmit Kaur went to the house of the deceased and after 5/7 minutes, the deceased was seen accompanying her to her house. He suspected that Mito alias Gurmit Kaur would lead the deceased to have illicit intercourse and accordingly, he and Suresh went to Rambhaj and narrated him about all that. Both of them then went to the house of Mito alias Gurmit Kaur, who was standing in the courtyard of her house and the doors were closed. On seeing them coming, she ran away. They heard the cries of the deceased from inside. She was proclaiming

that she had been defrauded and, therefore, wanted to be left free. All of them went inside and saw Sarwan Kumar and deceased in compromising position. Sarwan Kumar started begging pardon, whereas the deceased took up her clothes and went to her house. They apprehended Sarwan Kumar and took him to the house of Sarpanch. In the meantime, Sarwan Kumar managed to escape. All of them went to the house of the deceased, but she was not present there. Search was conducted in the village to locate her, but in vain. He had apprised the father of the deceased about the occurrence. Again stated that they did not disclose about the incident to the father of the deceased on the ground that the honour of the girl was involved. On 20.9.1998, he apprised everything to the father of the deceased when they found the dead body of his daughter lying near village Gagsina. He deposed that the deceased might have committed suicide due to shame or had been murdered by the accused. He further deposed that while they were searching for the victim, accused Karambir was also seen searching for her in the village.

PW2- Rambhaj made similar statement as was made by PW1-Jai Bhagwan.

PW3-Jagdish, father of the deceased, reiterated the version given by him while making statement for lodging the missing report Ex.PA. He also deposed that on

20.9.1998, he came to know about the dead body of his daughter lying in a canal, near village Gagsina. He went to the spot and identified the dead body to be that of his daughter. According to him, accused Mito had taken his daughter to her house, where accused Sarwan Kumar committed rape upon her and due to this reason, she had committed suicide.

PW4-Dr. Sanjay Ahlawat, Medical Officer, General Hospital, Karnal, testified that he had constituted a Board consisting of himself and Dr. Amarjit Wadhwa on 20.9.1998 for conducting post mortem. However, since the body of the deceased was in an advanced stage of putrefaction, marks of violence could not be ascertained. The dead body was referred to the Medical College, Rohtak.

PW5-Prem Kumar, Draftsman, proved the scaled site plan Ex.PE of the place of occurrence, which he had prepared on 27.11.1998 at the asking of the police.

PW6-Inspector Pardeep Singh deposed that on 17.9.1998, report Ex.PA was made by complainant Jagdish regarding missing of his daughter. On 20.9.1998, he visited village Bansa for investigation, where he recorded statement Ex.PB of the complainant. The said statement was sent to the Police Station for registration of the case. On its basis, formal FIR Ex.PB/2 was recorded by MHC Prem Singh. He deposed that he reached the place near WJC and after

getting the dead body photographed, he took it out from the canal. He prepared inquest report Ex.PE and rough site plan Ex.PF of the place of recovery. He dispatched the dead body for post mortem. When he visited village Bansa, he recorded the statements of Jai Bhagwan, Rambhaj and Suresh. He also searched for the accused. He prepared rough site plan Ex.PG. On 22.9.1998, he recorded the statements of Ajay Kumar and Karambir. On 28.9.1998, he obtained copy of the post mortem report and on its basis, added offence under Section 376 IPC to the FIR. He arrested accused Mito alias Gurmit Kaur on 23.9.1998 and accused Sarwan Kumar and Karambir on 25.9.1998. Accused Sarwan Kumar was made to undergo medical examination. On completion of investigation, final report under Section 173 Cr.P.C., was prepared.

PW7-Constable Mange Ram, tendered his affidavit Ex.PH in evidence.

PW8-Dr. Umesh Mehta, Medical Officer, General Hospital, Karnal, testified that on 7.10.1998 at 11.50 a.m., he conducted medico legal examination of accused Sarwan Kumar, aged 22 years. According to him, there was nothing to suggest that the accused was unable to perform sexual intercourse.

PW9-HC Prem Singh, testified that on 28.9.1998, Inspector Pardeep Singh, deposited with him three sealed

parcels. On 29.9.1998, he handed over those parcels to Constable Mange Ram for being delivered in FSL, Madhuban.

PW10-Dr. Basant Lal Serohiwal, Medical Officer, Reader, Department of Forensic Medicines, PGI, Rohtak, deposed that on 21.9.1998 at 11.30 a.m., he conducted post mortem on the dead body of daughter of complainant-Jagdish, resident of village Bansa, aged 16 years and found as under:-

“....Body was emitting foul smell. Skin was peeled off at places. Degloving of hands and feet was present. Scalp hairs were peeled off easily. Teeth were partially loosened. The molar had not erupted. Pubic hair and axillary hair were sparse.

xx xx xx xx

Height of body was 168 cm, face and features were bloated but somewhat identifiable. Eyes were protruding out, tongue was protruding out and clenched in the teeth. Sand was present at places. Scalp hairs 20 to 30 cm blackish having hair clip and gajra type cloth on the terminal part of hair. Abdomen was distended.

External injuries.

1. The hymen was torn at 5 and 7 O' clock position with effusion of blood. Blood stained

decomposed material was oozing out of vagina.

The wall of the vagina internally was showing effusion of blood with congestion. Vaginal swab and slides were preserved for examination.

Internal Examination.

Head - Scalp was loosely attached. No fracture was seen in the skull and brain was liquefied and decomposed. Neck structures were intact. Trachea and larynx was containing decomposed material with some greyish sticky dirty material. The heart was soft, flabby and decomposed. The post mortem bullae was present at places. Lungs were soft, decomposed and having post mortem bullae.

Stomach. It was almost empty and was having some dirty greyish sticky material on the walls and walls were soft and decomposed.

Small intestine was containing digested food material and gases. Walls were soft and decomposed.

Large intestine was containing faecal matter and gases walls were soft and decomposed.

Liver was soft decomposed, internal architecture was somewhat maintained.

Spleen was soft, pulp and decomposed.

Kidneys were soft and decomposed, internal architecture was maintained.

Urinary bladder was empty soft and decomposed.

Uterus was soft and decomposed along with appendages. There was no fracture in the pelvis.

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No definite opinion could be given regarding cause of death at that stage. Viscera had been sealed and preserved for chemical analysis. However, there were findings suggestive of sexual intercourse which were ante-mortem and recent in duration. Post mortem interval was about 4 to 5 days.”

After going through the chemical analysis report of viscera shown to him, which did not indicate any common poison having been detected in the viscera, he could not give a definite opinion regarding cause of death. However, according to him, the injuries in the external genitalia/private parts were suggestive of sexual intercourse. However, if there was no ejaculation, the findings of sperm may not be possible or if the body was

decomposed and found in the water, the same may be destroyed if ejaculation had been done.

After hearing learned counsel for the parties and on going through the record, the trial Court believed the prosecution version against the two convicts, namely, Sarwan Kumar and Gurmit Kaur alias Mito, and accordingly, they were convicted and sentenced, as mentioned above. However, as there was not an iota of evidence against accused Karambir, the trial Court held that the prosecution had miserably failed to establish its case against him and accordingly, acquitted him of the charge under Section 306 IPC.

Having heard learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that it was complainant Jagdish, father of the deceased, who had made statement after going to the Police Station on 17.9.1998 at 4.50 p.m., wherein he mentioned that his daughter, who was mentally not stable, had left the house on that day at about 11 a.m. and despite search being made for her, she could not be traced. On the basis of said statement, DDR No. 21 dated 17.9.1998 (Ex.PA) was recorded at 4.50 p.m. Subsequently on 20.9.1998, the complainant met Inspector Pardeep Singh at 9.00 a.m., in the village itself before whom he got recorded his statement EX.PB to the effect that on 17.9.1998, he along with his

wife was busy in the fields, his eldest son was away to Karnal, while the youngest son was in the school. His daughter was all alone present in his house. Though he had lodged the missing report on 17.9.1998, yet only on 20.9.1998, he learnt that Mito alias Gurmit Kaur of his village had enticed his deceased daughter to her house. Rather, it was accused Sarwan Kumar, who had asked Mito alias Gurmit Kaur to bring the deceased to his house for doing bad things. At that time, Rambhaj, Suresh and Jai Bhagwan became apprehensive and, accordingly after going to the house of Mito alias Gurmit Kaur, they got the door opened. While Mito alias Gurmit Kaur fled from her house, accused Sarwan started begging pardon from Rambhaj, Suresh and Jai Bhagwan by requesting them not to apprise about the incident to anyone or else, he would be defamed. At that time i.e. 11 a.m., his daughter left the house of Mito alias Gurmit Kaur, whereas Sarwan managed to give a slip to Jai Bhagwan, Suresh and Rambhaj. Thereafter, he along with his co-villagers searched for his daughter in the wells, canals and other places, but in vain. However, on 20.9.1998, the dead body of his daughter was found lying under the bridge of WJC in village Gagsina.

A conjoint reading of the missing report Ex.PA and statement Ex.PB forming basis of the FIR, makes out that the deceased, who was mentally challenged left her

house on 17.9.1998 at 11 a.m., and after receiving information in this regard, complainant-Jagdish got recorded the missing report Ex.PA with the police on the same day at 4.50 p.m. However, it is made out that on 17.9.1998, Rambhaj, Suresh and Jai Bhagwan had seen accused Mito alias Gurmit Kaur, taking the deceased with her to her house. Out of the aforementioned three persons, the prosecution examined Jai Bhagwan as PW1 and Rambhaj as PW2. If their statements made before the trial Court, are accepted, it can be deciphered that on 17.9.1998 the time was 10.30/11.00 a.m., they had seen accused Mito alias Gurmit Kaur with her. This fits in well with the statement Ex.PB made by complainant-Jagdish before Inspector Pardeep Singh on 20.9.1998, wherein he stated that on 17.9.1998 at 11.00 a.m., the deceased had left the house of Mito alias Gurmit Kaur, after Rambhaj, Suresh and Jai Bhagwan had snoop on the house of Mito alias Gurmit Kaur, who had escaped from the spot in the meantime and afterwards when they noticed the deceased in that house, the deceased also left the house of Mito alias Gurmit Kaur between 11 a.m. and 4.50 p.m.

According to the prosecution, PW1-Jai Bhagwan and PW2-Rambhaj had seen accused Mito alias Gurmit Kaur taking the deceased to her house and both of them then followed her to her house, where they noticed accused

Sarwan Kumar and the deceased in compromising position. They were under a duty to immediately inform the father of the deceased about the incident. In their respective examination-in-chief, both PW1-Jai Bhagwan and PW2-Rambhaj testified that they had searched for the deceased in the village but did not disclose the entire incident to complainant-Jagdish as it involved honour of his daughter. Complainant-Jagdish was not a stranger to the case. Rather, being the father of the girl, he ought to have been taken into confidence by PW1-Jai Bhagwan and PW2-Rambhaj. So much so that after complainant-Jagdish had lodged missing report Ex.PA on 17.9.1998 at 4.50 p.m., both PW1-Jai Bhagwan and PW2-Rambhaj, did not apprise complainant Jagdish about the involvement of the accused and, that too, upto 20.9.1998. Only after the dead body of the complainant's daughter was found lying under the bridge of WJC in village Gagsina that those two witnesses, for the first time, came up with the version of having seen accused Mito alias Gurmit Kaur taking the complainant's daughter with her to her house and when they had reached there, they found Mito alias Gurmit Kaur, fleeing from the spot and accused Sarwan Kumar in compromising position with the deceased.

PW1-Jai Bhagwan admitted in his cross-examination that he did not file any complaint/application

to the police against accused Mito regarding her illegal activities. He went on to state that accused Mito alias Gurmit Kaur was on visiting terms with the complainant for about 15 days prior to the incident, but he never complained to Jagdish about the habits of accused-Mito. He further admitted that after Jagdish had visited the police Station, the police had come to the village for investigation, but neither he nor Suresh nor also Rambhaj, gave any information. The explanation given by him that it involved honour of the girl, could be accepted if the witness had not informed the villagers. He was required to inform the father of the deceased and also the police which had come to the village consequent upon the complainant lodging the missing report. He went on to add that despite knowing the fact when the police had arrived in the village, he did not meet them. His explanation again was of honour of a girl being involved. Though he could not state as to whether the police visited the village from 17.9.1998 to 20.9.1998, but he kept on doing his routine work during those days. He, however, volunteered to state that he had been searching for the deceased right from 17.9.1998 upto 20.9.1998.

Similarly, PW2-Rambhaj during his cross-examination, stated that he had told the police about the question of honour being involved and accordingly, he had not disclosed any fact to the father of the deceased. He was

confronted with his statement Ex.DA, wherein it was not so recorded. He also stated that he did not inform Prithi, brother of Jagdish about the deceased accompanying Mito. He also stated that he did not inform the police about the incident on the day complainant Jagdish had lodged the first report. The police had arrived in the village on 17.9.1998 after lodging of the missing report and was present at the house of the Sarpanch. Though all of them, referring to PW1-Jai Bhagwan, Suresh and Rambhaj himself, had met the police, but they did not inform the police about the occurrence on 17.9.1998. Even thereafter, the police was quite often visiting the village, but after 17.9.1998, he met the police only on 20.9.1998.

From the above, it is doubtful if PW1-Jai Bhagwan and PW2-Rambhaj had seen any incident on 17.9.1998 i.e. of seeing accused Mito alias Gurmit Kaur taking the deceased with her to her house; accused Mito alias Gurmit Kaur opening the door and fleeing from the spot; accused Sarwan Kumar and the deceased found in compromising position; deceased leaving the house of Mito alias Gurmit Kaur; accused Sarwan Kumar after being apprehended, seeking pardon from them; and, while being taken to the house of Sarpanch, his having managed to run away. The reason as to why they have deposed on the aforementioned lines, can be deciphered from the cross-

examination of PW1-Jai Bhagwan when he stated that accused Mito alias Gurmit Kaur had moved an application to the police for theft of her buffalo against his brother Jaswant. He also testified that after the matter was agitated in the Police Station, his brother Jaswant had returned the said buffalo to accused Mito alias Gurmit Kaur. He tried to give an explanation about his brother Jaswant committing theft of the buffalo of accused Mito alias Gurmit Kaur by stating that husband of Mito alias Gurmit Kaur owed money to him and for that reason he had taken her buffalo. However, fact remains that accused Mito alias Gurmit Kaur had moved an application against his brother Jaswant to the police pursuant to which he was made to return the said buffalo to Mito alias Gurmit Kaur. Thus PW1-Jai Bhagwan had reason to come up with a false version.

Even PW2-Rambhaj, admitted in his cross-examination that though complainant Jagdish was not related to him, but they belonged to the same Biradari (community). He also deposed that Dr. Hardev Singh was present at his shop on that day. He had not asked from Dr. Hardev Singh, the reason of arrival of Suresh and Jai Bhagwan at his shop. However, Dr. Hardev Singh was on visiting terms with complainant-Jagdish as he was earlier a tenant of his brother Pirthi. Though he deposed that he did not know whether Ram Pal, whose shop Dr. Hardev Singh,

had taken on rent, had evicted Dr. Hardev Singh from his shop, but he admitted it as correct that after eviction of Dr. Hardev Singh, accused Karambir started running medical practice in the said shop.

Coming to the recovery of the dead body on 20.9.1998, it is the case of the prosecution that while complainant-Jagdish and others were looking for the deceased, they noticed her dead body lying under the bridge of WJC in the area of village Gagsina. The dead body had not been got recovered by any of the three accused. While conducting post mortem, PW10- Dr. Basant Lal Serohiwal noticed that the body was emitting foul smell, skin was peeled off at places, degloving of hands and feet was present, scalp hairs were peeled off easily and the teeth were partially loosened. Merely because hymen was torn at 5 and 7 O'clock position with effusion of blood, is not sufficient to charge the accused under Section 376 IPC, especially when the prosecution case about the involvement of the accused Sarwan Kumar in committing rape upon the deceased has been doubted by this Court.

In view of the above, it cannot be said that the prosecution has been able to prove its cases against the convicts beyond reasonable doubt.

Resultantly, the present appeal filed by convict Sarwan Kumar and connected appeal i.e. CRA-S-685-SB of

2000 filed by Gurmit Kaur alias Mito, are accepted, impugned judgment of conviction and order of sentence, are set aside and both the convicts are acquitted of the charges against them.

(T.P.S. Mann)
Judge

21.01.2015
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No